



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2004

Mr. Paul F. Wieneskie
Cribbs & McFarland
P.O. Box 13060
Arlington, Texas 78094-0060

OR2004-4945

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203586.

The Euless Police Department (the "department"), which you represent, received a request for copies of all incident reports from a specified three month period and concerning two named individuals. You claim that the some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You state that the two reports submitted as Exhibit B involve incidents that Child Protective Services is currently investigating. Because this information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the reports in Exhibit B are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold these reports from disclosure under section 552.101 of the Government Code as information made confidential by law.¹

Next, you claim that the records submitted as Exhibits C and D are confidential under section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

¹ We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that the report submitted as Exhibit C involves allegations of juvenile conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (providing that in title 3 of Family Code, “child” means person who is ten years of age or older and under seventeen years of age), .03(b)(3) (defining conduct indicating a need for supervision to include “the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return”). Thus, this report is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this report is confidential in its entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. However, the reports submitted in Exhibit D do not allege that the child violated a penal statute or otherwise engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03. Thus, this information is not confidential under section 58.007 and may not be withheld on that basis.

We note, however, that some of the information in Exhibit D must be withheld under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must also withhold the Texas driver's license numbers we have marked under section 552.130.

In summary, the department must withhold as confidential the reports in Exhibit B under section 552.101 in conjunction with section 261.201 of the Family Code. The department must also withhold the report in Exhibit C under section 552.101 in conjunction with section 58.007(c) of the Family Code. The department must withhold the marked driver's license numbers in Exhibit D under section 552.130. The department must release all remaining information to the requestor.²

² Some of the records marked for release contain information relating to the requestor's child that might be excepted from disclosure to the general public under laws and exceptions designed to protect the child's privacy. However, as a parent of the child, the requestor has a special right of access to this information. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person to whom information relates,

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

or that person's representative, solely on grounds that information is considered confidential by privacy principles).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Barenblat", with a long horizontal flourish extending to the right.

Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 203586
Enc. Submitted documents